IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

WEDNESDAY, THE 19TH DECEMBER 2007 / 28TH AGRAHAYANA 1929

CRL.A.No. 928 of 1999(C)

CC.9/1997 of ENQUIRY COMMR. & SPL. JUDGE, THRISSUR
CRIME NO. V.C. 4/95 OF V.A.C.B, IDUKKI

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APPELLANT:

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1. K.J.JOSEPH, KONNAKAL HOUSE, CHOTTUPARAP.O., VANDIPERIYAR.

2. K.J.MATHEW, KOLLAMPARAMBIL, ATTAPPALAM, KIMILY.

BY ADV. SRI.ABRAHAM VAKKANAL
SRI.SAJI KURIACHAN
SRI.M.R.NANDAKUMAR
SRI.PAUL ABRAHAM VAKKANAL
SMT.MERIN THALIATH
SRI.ARUL KUMAR.P

RESPONDENTS:

STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.SUKUMARAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 19/12/2007, ALONG WITH CRA NO. 3 OF 2000 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A.K. Basheer, J.

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Crl.As.928/1999 & 3/2000

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Dated this the 19th day of December, 2007.

Judgment

Appellants who have been found guilty under Section 13(1)(c) and (d) read with Section 13(2) of the Prevention of Corruption act 1988 and under Section 420 read with Section 34 IPC by the Enquiry Commissioner and Special Judge, Thrissur have preferred these two appeals challenging the order of conviction and sentence. The appellants have been convicted and sentenced to undergo Rigorous Imprisonment for 4 years each and to pay a fine of Rs.25,000/- each and in default to undergo Simple Imprisonment for 1 ½ years under Section 13(1)(c) read with Section 13(2) of the Act. They have also been sentenced to undergo Rigorous Imprisonment for 4 years each under Section 13(1)(d) read with Section 13(2) of the P.C. Act and to undergo Rigorous Imprisonment for 3 years each and to pay a fine of Rs.15,000/- each under Section 420 read with Section 34 IPC and in default to undergo Simple Imprisonment for 1 ½ years each. The trial court directed that the substantive sentence of imprisonment shall run concurrently.

2. The prosecution case in brief was that accused No.1 being the President and accused Nos.2 and 3 being the members of Kumily Panchayat had misappropriated a sum of Rs.30,000/- and thereby obtained pecuniary advantage by illegal means in connection with construction of a waiting shed at Chenkara within the limits of the

said Panchayat under the Jawahar Rozgar Yojana. The prosecution alleged that accused Nos.1 and 3 in their capacity as the President and member were the custodians of the fund allocated to the Panchayat under the Yojana. The construction of the waiting shed was undertaken by accused No.2 in his capacity as the nominee and as authorised by the Panchayat. Accused Nos.1 and 3 had released the sum of Rs.30,000/- to accused no.2 through Exts.P7 and P8 cheques dated April 26, 1991 and May 6, 1991 for Rs.15,000/- each contrary to the stipulations and conditions contained in Exts.P19 to P23 manuals and circulars issued in relation to the Scheme. Further, no permission was obtained by accused Nos.1 and 3 from the competent authority to release the entire money. Accused No.2 did not complete the work. The Assistant Executive Engineer in Ext.P14 report stated that the work for a sum of Rs.3732.28 had only been completed. Pw.14 had registered Ext.P25 First Information Report in this connection. Though initially accused Nos. 1 and 2 alone were implicated, later accused No.3 was also included in the party array. Charge sheet was laid by Pw.15 after completing the investigation.

3. Prosecution had examined Pws. 1 to 15 and Exts.P1 to P28 were marked on its side. Dw1. was examined on the side of the defence. The trial court after an elaborate and meticulous consideration of the oral and documentary evidence adduced by the prosecution found that the charge against the accused had been satisfactorily established. The material witnesses had supported the prosecution fully. It had come out in evidence that accused had misappropriated

the funds under the Yojana. Accordingly they were found guilty of the offences alleged against them.

4. It is not in dispute that the work in question viz., construction of waiting shed at Chenkara in Kumily Panchayat was included under the Jawahar Rozgar Yojana. The relevant file (Ext.P1) relating to the above work was produced through Pw.1, the Secretary of the Grama Panchayat. Ext.P1(c) was the agreement signed by accused No.2 undertaking to execute the work. The President of the Panchayat, accused No.1 and 2 were also parties to the agreement. Ext.P1(a) and (b) vouchers for Rs.15,000/- each showed that accused No.2 had received the money from the Panchayat. Accused Nos. 1 and 3 in their capacity as President and Ward member respectively, who were the custodians of the fund under the Yojana, had admittedly issued Exts.P7 and P8 cheques for Rs.15,000/- each corresponding to Exts.P1(a) and (b) vouchers. Ext.P12(a) is the resolution passed by the Panchayat proposing to construct the waiting shed for a sum of Rs.30,000/= at Chenkara pursuant to which necessary sanction was issued.

5. It is not in dispute that Pw.4 the Overseer of the Azhutha Block had prepared the estimate for the construction as instructed by Pw.3 the Assistant Engineer. Pw.5 the Upper Division Clerk in the Panchayat proved Ext.P12(a) resolution of Panchayat regarding sanctioning of the waiting shed at Chenkara. He also referred to the resolution of the Panchayat by which accused No.2 was appointed as the nominee to execute the work as provided under the Yojana. Pw.6 the Assistant Executive Engineer of District Rural Development

Authority (DRDA) gave evidence that technical sanction for the work was granted under Ext.P1(e). Pw.9 the Block Development Officer had given the details of the Yojana and Exts.P19 to P23 which were orders, circulars, manuals etc. pertaining to the said scheme, were also marked through him. I will refer to the evidence of Pws.7, 12, 14 and 15 a little later.

6. As mentioned earlier, accused No.2 was appointed as the nominee, as provided under the Scheme. He had entered into Ext.P1 (c) agreement with the President of the Panchayat undertaking to complete the construction in accordance with the terms and conditions appended to the agreement. Accused No.2 was appointed as the nominee since he was elected Ward Member of the Panchayat. Exts.P19 to P23 manuals, circulars, orders etc. in relation to the Scheme clearly stipulated the manner in which the works under the Scheme had to be carried out. It is not necessary to refer to the above stipulations or terms and conditions contained in those manuals, circulars etc. since it had come out in evidence that the accused had flouted most of the stipulations and conditions. One of the conditions in Ext.P21 circular was that only one advance was liable to be given to the nominee for the work. The nominee had to maintain a muster roll pertaining to the work. Only 50% of the estimated amount was liable to be given as advance. The balance had to be paid in instalments in proportion to the progress of the work. As mentioned earlier, the entire estimated amount of Rs,.30,000/- was released by accused Nos.1 and 3 to accused No.2 in 2 instalments through Exts.P7 and P8 cheques dated

April 26, 1991 and May 6, 1991 respectively.

7. Pw.7 the Assistant Executive Engineer in his Ext.P14 report had categorically stated that the nominee (A2) had not completed the work. Only a sum of Rs.3732.28 had been spent by the nominee. He had also given details of the work carried out by accused No.2. Pw.12 Mason who was engaged by A2 for the work had deposed before the court that the shed was constructed only up to lintel level and the said structure would serve no purpose at all to anybody. He further stated that he had been paid Rs.3400/- for the work done by him.

8. In this context it is pertinent to note that accused No.2 when questioned under Section 313 Cr.P.C. had admitted that the shed had been constructed only upto lintel level and the said structure could not be used as a waiting shed at all. The said question was put to him with a specific reference to the statement given by Pw.12 in his deposition. More importantly, the evidence of Pw.7 the Assistant Executive Engineer clinchingly showed that the work of the waiting shed was never completed by A2. It may also be noticed that the accused had no case that the waiting shed had been completed in terms of the estimate, plan etc. While accused No.2 in his 313 statement had put the blame on accused No.1, he had further stated that Exts.P7 and P8 cheques were in fact encashed by A1. He went on to state further that he had lodged a complaint against A1 before the Panchayat regarding his failure to complete the work. It was contended by the Panchayat that it was the responsibility of the nominee (A2) to inform the Panchayat about the progress of the work. He had failed to do so.

Curiously, accused 1 and 3 who seemed to be sailing together, put the blame on the Panchayat Committee stating that it was the responsibility of the Panchayat to oversee the work. If the nominee did not complete the work, action should have been taken against him by the Panchayat. They went on to contend further that the Panchayat had in fact issued a notice to accused No.2 demanding refund of money advanced to him. Reference has been made to the above contentions taken by the accused only to highlight the fact that the accused had tacitly admitted that the work of the waiting shed had not been completed at all. As noticed already, the evidence of Pws.7 and 12 also clearly substantiated the prosecution case in this regard.

9. I have been taken through the deposition of the witnesses and the documents marked in the case. I have perused the judgment of the trial court carefully. Learned Judge had averted to all the relevant material pieces of evidence meticulously. I do not find any reason to interfere with the finding entered by the court below. In my view, the prosecution had successfully established the charge against the accused. There is no merit in any of the contentions raised by the petitioner. The appeals are without any merit.

10. However having regard to the peculiar facts and circumstances of the case, particularly considering the fact that the crime in question had been allegedly committed by the accused way back in 1991 and that they have been undergoing the agony of the prosecution for the last more than 15 years, I am of the view that interference is warranted in the matter of sentence. It is also brought to

my notice that accused 1 and 2 are in their early 60s while A3 is in his late 40's.

11. In the above facts and circumstances I am satisfied that interest of justice will be met if the substantive sentence imposed on the appellants is modified, atleast to some extent. Therefore in lieu of the sentence of R.I for 4 years each under Section 13(1)(c) and (d) read with Section 13(2) of the Act, appellants shall suffer RI for one year each . Similarly for the offence under Section 420 IPC also they shall undergo Rigorous Imprisonment for one year each. If the appellants fail to pay the fine amounts under Section 13(1)(c) read with Section 13(2) of the Act and under Section 420 read with Section 34 IPC, they shall suffer simple imprisonment for 6 months each. In all other respects, the order of the trial court shall be sustained.

Appeals are disposed of as above.

A.K. Basheer
Judge.

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